

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5894 OF 2006

Sadanand Sambhaji Salunkhe & Ors. ...Petitioners

Versus

Murlidhar Shankar (since deceased)
through his legal heirs ...Respondents

Shri A.Y.Sakhare, Sr counsel for the Petitioners.
Shri Nitin P. Deshpande for the Respondent No.2.

**CORAM : ABHAY S.OKA, J.
DATED : JUNE 08, 2007.**

P.C.:

1. Heard learned senior counsel appearing for the Petitioners and Advocate for the Respondents. The second Respondent who is not a party to the suit made an Application at Exhibit 36 in execution of the decree passed in favour of the Petitioners by invoking Rule 97 of Order XXI of the Code of Civil Procedure, 1908 contending that he is in possession of the suit property and that the decree is nullity. By the impugned order dated 31st July, 2006, trial Court directed that issues should be framed for making an adjudication on Application at Exhibit 36 filed by the second Respondent.

2. Relying upon decision of Division Bench of this Court in the case of **West Coast Paper Mills Ltd Vs. Trustees of the Port of Bombay** (1999(3) Civil LJ Page

356), the learned senior counsel appearing for the Petitioner submitted that though adjudication is required to be made under Rule 97 of Order XXI of the said Code on Application at Exhibit 36, it is not necessary that in every case while making adjudication the issues are required to be framed and leading of evidence is to be permitted. He submitted that when the third party is claiming through the judgment debtor, it is not necessary to frame the issues.

3. I have considered the submissions. In view of the settled position of law as reflected from the judgment of the Apex Court in the case Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal [(1997) 3 Supreme Court Cases Page 694] on the Application made by the second Respondent, an adjudication will have to be made by the trial Court and an order will have to be passed which will have the effect of decree for purposes of an Appeal. The only order passed by the trial Court is of directing framing of issues. It is not possible to interfere with the said order passed by the trial Court which does not affect the rights of the Petitioners. However, the Application at Exhibit 36 will have to be decided as expeditiously as possible after making proper adjudication. Shri Deshpande appearing for the second Respondent states that the

second Respondent will co-operate with the trial Court for expeditious disposal of the Application at Exhibit 36 and will not seek adjournments on any unreasonable grounds.

4. The Writ Petition is not entertained by keeping all the questions open. The trial Court will complete the adjudication on Application at Exhibit 36 and will pass an order as expeditiously as possible and in any case on or before 30th September, 2007.

JUDGE